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R.D. Klemmer
Proc I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20541

FILE: B-187543

DATE: January 12, 1977

MATTER OF: Air Products and Chemicals, Inc.

DIGEST:

Where adequate competition resulted in reasonable prices and where there was no purpose or intent on the part of the procuring agency to preclude the protester from competing, the contract awarded will not be disturbed solely because the protester (the incumbent contractor) did not receive a copy of the invitation for bids.

On September 1, 1976, the Veterans Administration (VA) issued invitation for bids (IFB) 646-6-77 for bulk oxygen, USP - gaseous or liquid. The bulk oxygen was to be supplied to the VA hospital in Pittsburgh, Pennsylvania, from October 1, 1976, through September 30, 1977.

According to the VA, an IFB was sent to seven prospective bidders, including the protester. The prospective bidders were selected from an established bidders mailing list. Moreover, the VA has stated that the IFB was " * * * publicly displayed in U.S. Post Office and Court House, Grant Street, Pittsburgh, Pa. 15219; Advertised in Market Service, 303 42nd St., West, New York, N.Y. 10036; U.S. Government Advertiser, 669 8th Ave., New York, N.Y. 10038; and Commerce Daily, Room 1034, 433 Van Buren St., Chicago, Illinois 60607."

Five bidders responded to the IFB. The bids were opened on September 21, 1976. After reviewing the bids, the contracting officer awarded the bulk oxygen contract to Chematron Corporation (Chematron), the low bidder. Before making the award, the contracting officer determined that Chematron was responsible, and its bid price was reasonable.

Air Products and Chemicals, Inc. (Air Products), the incumbent contractor and protester, alleges that it was informed of the upcoming solicitation on September 3, 1976, by an official from the VA, who stated that the IFB, which would have a short lead time, would be mailed to Air Products "very shortly." Air Products contends that

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it has no record of ever having received the IFB; therefore, it is argued that the contract award to Chemetron should be canceled. Air Products also states that "[t]he alleged Contract/Award * * * to Chemetron Industrial Gases at \$.38/100 cubic feet of liquid oxygen is double the present price."

The contracting officer takes the position that since Air Products knew of the short lead time, it should have checked with the contracting section at the VA to insure that an IFB had been mailed. And if no IFB had been received within a reasonable time, Air Products should have either requested that another IFB be sent or even picked up an IFB from the VA. Further, the contracting officer states that "[t]here was not any intent or purpose on the part of the Government to preclude Air Products & Chemical, Inc., from bidding." The contracting officer also concluded that the VA's estimated monthly requirements of bulk oxygen could be purchased from Chemetron at a price less than that being charged by Air Products.

The issue here is whether the contract award to Chemetron should be canceled and the contract readvertised because Air Products allegedly received no copy of the IFB.

In Michael O'Connor, Inc., B-185502, May 14, 1976, 76-1 CPD 326, we took note of numerous GAO decisions which have held that where adequate competition resulted in reasonable prices and where there was no purpose or intent on the part of the procuring agency to preclude a bidder from competing, bids need not be rejected solely because a bidder (even the incumbent contractor) did not receive a copy of the IFB.

In the instant protest, we have taken note of the fact that the IFB was widely disseminated; five bidders responded to the IFB, which demonstrates that there was adequate competition; the contracting officer determined that the low bidder was responsible and its bid price was reasonable; and there is nothing in the administrative record to indicate that the VA attempted to preclude Air Products from competing. In summary, we find no basis for objecting to the award to Chemetron. Cf. Michael O'Connor, Inc., *supra*; Valley Construction Company, B-185684, April 19, 1976, 76-1 CPD 266.

Accordingly, the protest is denied.

R. F. Keller
Deputy Comptroller General
of the United States